IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

Crl.MC.No. 729 of 2007()

CRA.190/2004 of ADDL. SESSIONS COURT, THRISSUR

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PETITIONER/ACCUSED:

MANOJ T.K., S/O.KARAPPAN,
THAZHATHUVEETTIL HOUSE, OLLUKKARA P.O.,
THRISSUR.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS/COMPLAINANT & STATE:

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1. SWWTO THOMAS, S/O THOMAS,
KAREPARAMBAN HOUSE, VALARAKKAVU, THRISSUR,
PARTNER OF VIMALA TRUST, RICE BAZAR, THRISSUR.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.B.K.PURUSHOTHAMAN
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.729 of 2007

Dated this the 22nd day of March 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the Negotiable Instruments Act. He faces the sentence of imprisonment for a period of one month and to pay an amount of Rs.25,000/- as compensation. In default, he has been sentenced to undergo S.I for a period of one month. The verdict of guilty, conviction and sentence passed by the learned Magistrate were upheld by the learned Sessions Judge in appeal. A revision petition was filed before this court but the same was dismissed as the delay was not condoned, submits the learned counsel for the petitioner.

2. The petitioner thus now faces the prospect of incarceration in prison. The petitioner has settled his disputes with the complainant and both have come before this court with an application Crl.M.P.No.1712/2007 dated 14/02/2007. That petition is duly signed by the rival contestants and counter signed by their respective counsel. The learned counsel for the respondent/complainant vouches for the signature of the respondent in the joint application for composition.

2. As to whether post revision compositions can be accepted in respect of the offences punishable under Section 138 of the Negotiable Instruments Act, we have the decision in Sabu George v. Home Secretary [2007(1) KLT 982]. It has been held that the offence under Section 138 of the Negotiable Instruments Act is compoundable without the leave of the court under Section 320(1) Cr.P.C and that such composition can, in an appropriate case, be effected prior to the filing of the complaint or even after the verdict of guilty, conviction and sentence has become final. In an exceptional case, it has been held that such post revision compositions can also be accepted and acted upon if the interests of justice compellingly demand such a course.

3. The offence in this case is one punishable under Section 138 of the Negotiable Instruments Act. The parties have settled their disputes and the complainant has compounded the offence. I am satisfied that the composition is genuine and can be accepted. If the composition is not accepted, it will have the effect of the petitioner being compelled to undergo substantive sentence of imprisonment. I am satisfied that humane compassionate deserves to be shown in the facts and

circumstances of this case. I am satisfied that this is a fit case where powers under Section 482 Cr.P.C can be invoked to quash the sentence accepting the post revision composition that is entered into.

4. I take note of the effort and resources of the State spent in resolution of the dispute. Acceptance of the composition and setting aside of the impugned sentence can be subject to appropriate conditions. The petitioner can be mulcted with the liability to pay an amount of Rs.3000/- (three thousand only) as costs to the State.

5. In the result, this Criminal Miscellaneous Case is allowed. The sentence imposed on the petitioner under Section 138 of the Negotiable Instruments Act shall not be executed on condition that the petitioner deposits an amount of Rs.3,000/- (Rupees three thousand only) before the learned Magistrate which shall be reckoned as costs payable to the State.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006